

PT 00-22

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

GOOD NEWS PARTNERS,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

Nos. 99-PT-0048
(98-16-0514)

Real Estate Tax Exemption for
1998 Assessment Year

P.I.N: 11-30-213-034

Cook County Parcel

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCE: Mr. Mishel Keta of McDermott, Will & Emery on behalf of Good News Partners (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on September 10, 1999. Said determination found, in pertinent part, that 2/3 of the building, and a proportionate amount of the land, situated on real estate identified by Cook County Parcel Index Number 11-30-213-034,¹ was not "actually and exclusively used for

1. The portion of that property that is currently in dispute shall hereinafter be referred to as the "portion in dispute;" the property itself shall hereinafter be referred to as the "subject property."

charitable or beneficial purposes,” as required by Section 15-65 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*), during the 1998 assessment year.

The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on February 5, 1999. The Board reviewed applicant’s complaint and recommended to the Department that the entire subject property be exempt. The Department, however, partially rejected this Recommendation by issuing the aforementioned determination, which found that only 1/3 of the subject property was exempt.

Applicant filed a timely appeal as to the 2/3 of the subject property that was determined to be non-exempt but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that the portion in dispute be exempt from 1998 real estate taxes under Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on September 10, 1999, finding that the portion in dispute is not in exempt use.
2. Applicant is an Illinois not-for profit corporation. Its basic organizational purposes are, per its Articles of Incorporation, to relieve poverty by providing shelter to the underprivileged. Applicant Motion Ex. B.

3. Applicant obtained ownership of the subject property, which is located at 7628 N. Paulina, Chicago, IL, by means of a warranty deed dated October 19, 1993. Applicant Motion Ex. D.
4. The Application for Property Tax Exemption, filed with the Department on June 7, 1999, indicates that the subject property is improved with a 1 story building. Said Application further specifies that the building improvement occupies 3,016 square feet and is divided into two areas.
5. The first area is, per the Application, used as a thrift store that occupies approximately 1/3 of the total space. This area is not at issue herein, as it is already exempt under terms of the Department's determination.
6. The second area, which constitutes the portion in dispute, occupies the remaining 2/3 of the building improvement. Applicant designated this area as a "day care facility" on the Application.
7. Applicant was denied an exemption for the 1995 real estate taxes on this facility, on grounds that it had not procured necessary State licensure therefor, pursuant to the Recommendation for Disposition in Administrative Hearings Docket Number 95-16-0844. Applicant did not appeal this Recommendation, which was approved by the Director of Revenue on July 2, 1998. Administrative Notice.
8. Applicant did not use the portion in dispute as a day care facility throughout the 1998 assessment year. It did however, use that portion to store blankets, mattresses, food, recreational materials and other items related to the operation of Good News Partners New Life Shelter. (hereinafter "New Life").

9. New Life is shelter for homeless women and children, owned and operated by applicant, that is contained within a building located at 7632 N. Paulina, Chicago, IL. Applicant Motion Ex. B.
10. The real estate on which that building is situated is identified by Cook County Parcel Index Number 11-30-213-033 and located in direct proximity to the subject property. *Id.*
11. Applicant has never used the entire building for shelter-related purposes. Those parts of the building that applicant actually used for the New Life shelter facility were, however, exempted from 1993 real estate taxes in Docket No. 93-16-837, issued by the Department's Office of Local Government Services on July 1, 1996. Administrative Notice.
12. Applicant maintained this partial exemption throughout the 1998 assessment year. Applicant Motion Ex. F.

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether applicant's use of the portion in dispute qualifies as being "exclusively ... charitable or beneficent" within the meaning of Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1, *et seq*; 15-65.²

2. Section 15-65 states, in pertinent part, that:

The word “exclusively” when used in Section 200/15-65 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, “charitable or beneficent” uses refer to those that fall within the legal definition of “charity,” which is “a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.” Crerar v. Williams, 145 Ill. 625, 643 (1893); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

In this case, the Department determined that the portion in dispute was not in exempt use because the Recommendation for Disposition in Administrative Hearings Docket No. 95-16-0844 (which was included within the Department’s file in this matter) indicated that: (1) applicant did not obtain the necessary State licensure for its proposed day care facility during the tax year in question; and, (2) applicant had not obtained such licensure as of the date the Recommendation was issued.

Each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980). Hence, there is no *res judicata* or other preclusive effect from one tax year to another. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity[.]

App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Therefore, the only evidence that is relevant herein is that which pertains to applicant's use of the portion in dispute during the 1998 assessment year. *Accord*, People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (holding that the issue of property tax exemption necessarily depends on the statutory provisions that are in force during the period or tax year for which the exemption is claimed).

In this case, applicant used the portion in dispute for storage purposes throughout 1998. Storage areas are subject to exemption, provided that applicant's use thereof is "reasonably necessary" to facilitate another specifically identifiable exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). Such a use can be identified in this case because applicant employed the portion in dispute to store materials that it utilized at its nearby New Life shelter, a facility that was tax exempt during 1998. Consequently, applicant is entitled to have that portion of the subject property exempted from 1998 real estate taxes as a matter of law.

Based on the foregoing, I conclude that applicant's motion for summary judgment, which seeks relief only with respect to the portion in dispute, should be granted. Accordingly, the Department's initial determination in this matter should be modified to reflect that 100% of said property, inclusive of: (1) the entire building improvement situated thereon; and, (2) all of the underlying land, qualifies for exemption from 1998 real estate taxes under Section 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

WHEREFORE, for all the aforementioned reasons, it is my recommendation that 100% of real estate real estate identified by and situated on Cook County Parcel Index

Number 11-30-213-034 be exempt from 1998 real estate taxes under Section 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, et seq.

September 22, 2000

Date

Alan I. Marcus
Administrative Law Judge